

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

Moe Maurice Gibbs,)
)
Plaintiff,) Case No. 3:09-cv-101
)
-vs-) **ORDER ADOPTING REPORT AND**
) **RECOMMENDATIONS**
Correctional Officer Drew and)
Cass County Sheriff,)
)
Defendants.)

The Court has received a Report and Recommendation from the Honorable Karen K. Klein, United States Magistrate Judge, pursuant to 28 U.S.C. § 636, recommending that Defendants' Motion for Summary Judgment be granted and Moe Gibbs' Complaint be dismissed with prejudice (Doc. #66). Gibbs timely filed objections to the Report and Recommendation (Doc. #67).

In response to the Report and Recommendation, Gibbs contends the defendants, and any other layperson, should have been aware of his "serious medical condition" because his hand was swollen and because he was taken to emergency surgery 24 days after the injury. Gibbs ignores the ongoing medical attention he received between the time he fell and the day of his surgery. Gibbs' reiterated assertions do not establish, as a matter of law, the defendants were deliberately indifferent to his serious medical needs or safety. Gibbs also notes that he intended to wait until trial to cross-examine the witnesses since he cannot afford to pay to depose the witnesses. Gibbs has failed to point to any information that the witnesses might have that would raise a genuine issue of material fact for trial or otherwise defeat summary judgment.

After considering the Report and Recommendation, conducting a *de novo* review of

Gibbs' objections, and reviewing the entire file, the Court finds the Magistrate Judge's position is correct. Accordingly, the Court hereby adopts the Report and Recommendation in its entirety. For the reasons set forth therein, Defendants' motion for summary judgment is **GRANTED** (Doc. #57). Gibbs' Complaint is hereby **DISMISSED with prejudice**.

IT IS SO ORDERED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 3rd day of May, 2011.

/s/ Ralph R. Erickson
Ralph R. Erickson, Chief Judge
United States District Court